IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. CIVIL WRIT PETITION NO.6315/2005
(Ramdayal Vs. State of Rajasthan & Anr.)

DATE OF JUDGMENT : 16.11.2007

HON'BLE DR. VINEET KOTHARI,J.

Mr.M.R. Singhvi]
Mr.Girish Joshi], for the petitioner.
Mr.S. Ladrecha, Dy. G.A., for the State.
Mr. R.S. Saluja, for Municipal Corporation.

BY THE COURT:

1. Heard learned counsel for the parties.

2. This petition filed by the petitioner is second round of litigation before this Court. The earlier writ petition namely S.B.Civil Writ Petition No. 4936/1990 Ram Dayal Vs. State of Rajasthan & Ors. came to be dismissed by this Court on 06.03.2003. Operative part of the order is reproduced hereunder:

> "Accordingly, the writ petition is dismissed. The respondents are directed to proceed in accordance with by invoking their statutory power to use coercive process law for recovering the possession from the petitioner and mesne profit for use and occupation of the land in question after adjusting the amount if any paid by him towards alleged license fee. Recovery of possession be not withheld until determination of mense profit which shall be

> decided with 3 months by the Chief Executive of Municipal Council/UIT within whose jurisdiction the land in question falls as on today. Before determination of mesne profit hearing may be afforded to the petitioner.
>
> As I am also of the opinion that present litigation in the facts and circumstances amounts to gross abuse of process of Court, the petitioner shall pay cost of this litigation which is quantified at Rs. 5,000/-"

2. The petitioner took the matter before Division Bench by way of D.B. Civil Special Appeal No. 354/2003, which also came to be dismissed on 27.05.2003. In terms of the judgment of learned Single Judge, the Municipal Corporation was to determine the amount of mesne profits to be paid by the petitioner to the Municipal Corporation. This writ petition has been filed on the ground that before notifying the said amount of Rs. 78,22,386/- in a notice published in the newspaper Annex. 13 on record of the present writ petition, the petitioner was not even heard in the matter and was not afforded any opportunity of hearing while determining the said amount of mesne profits.

3. Learned counsel for the respondent Municipal Corporation, Jodhpur does not dispute this position.

4. Though there was a specific direction in the judgment of learned Single Judge that competent officer of the Municipal

Corporation/UIT within whose jurisdiction the land in question falls as on today shall hear the petitioner and determine the amount of mesne profits, it is not understood as to how such amount was determined without hearing the petitioner. No details of determination of the said amount are found in this said impugned public notice or the impugned notice Annex. 16 dated 20.09.2005.

5. Be that as it may, in the circumstance as narrated above, the impugned public notice issued by the Municipal Corporation and the notice Annex. 16 dated 20.09.2005 cannot be sustained.

6. Accordingly, the said notices as being in breach of directions given by this Court and otherwise also in breach of principles of natural justice, this writ petition is allowed and the impugned public notice Annex. 13 and impugned notice Annex. 16 dated 20.09.2005 are quashed and the Commissioner, Municipal Corporation, Jodhpur in whose area, the land in question admittedly falls, shall hear the petitioner and pass appropriate order determining the aforesaid amount of mesne profits. The petitioner in the first instance will appear before the Commissioner, Municipal Corporation, Jodhpur on 10.12.2007 and the Commissioner, Municipal Corporation, Jodhpur is

expected to decide and determine the said mesne profits on or before 31.12.2007.

7. With these observations, the writ petition is disposed of. No order as to costs.

(Dr. VINEET KOTHARI) J.

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